



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 18, 1995

Mr. Steven P. Price  
The Law Offices of Steven P. Price  
1937 N.E. Loop 410, Suite 325  
San Antonio, Texas 78217

OR95-180

Dear Mr. Price:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32049.

The Somerset Independent School District (the "school district") received a request for information regarding certain allegations made against school district Superintendent Ann Dixon. You contend that the requested information is excepted from required public disclosure under sections 552.102 and 552.103 of the Government Code.

Section 552.103(a) excepts information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To be excepted under section 552.103(a), information must relate to litigation that is pending or reasonably anticipated. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Once information has been obtained by all parties to the litigation,

for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Finally, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

You have submitted the requested information for our review and claim that the records relate to current litigation filed in State District Court in Travis County. We understand, however, that Ms. Dixon's attorney has had access to the requested information. Accordingly, you may not withhold the requested information under section 552.103 of the Government Code.

Section 552.102 excepts:

(a) . . . information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

(b) . . . a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (ruling that test to be applied in decision under statutory predecessor to § 552.102 was same as that delineated in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) for statutory predecessor to § 552.101). Information is protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it if

(1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

*Industrial Found.*, 540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to § 552.101).

In the *Industrial Foundation* case, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Industrial Found.*, 540 S.W.2d at 683. The *Hubert* court distinguished the information at issue there, names of candidates for the office of president of a university, from the information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*. *Hubert*, 652 S.W.2d at 551 (discussing *Industrial Found.*, 540 S.W.2d at 683). As in the *Hubert* case, the information at issue here is clearly distinguishable from the "intimate and embarrassing" information at issue in *Industrial Foundation*.

We have reviewed the records. The allegations do not contain highly intimate or embarrassing facts. Moreover, the allegations concerning a public employee's job performance are a legitimate public concern. See Open Records Decision Nos. 542 (1990) (information about qualifications of public employee is of legitimate concern to public), 470 (1987) (public employee's job performance does not generally constitute his/her private affairs), 467 (1987) (public has legitimate interest in job qualifications, including college transcripts, of public employees), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee). Accordingly, you may not withhold the requested records under section 552.102 of the Government Code. The records must be released in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/LBC/rho

Ref: ID# 32049

Enclosures: Submitted documents

cc: Mr. Mark Parker  
Interim Superintendent  
Somerset Independent School District  
P.O. Box 279  
Somerset, Texas 78069  
(w/o enclosures)

Ms. Jenny Butler  
Editor, Westside Sun  
San Antonio Express-News  
P.O. Box 2171  
San Antonio, Texas 78297-2171  
(w/o enclosures)

Ms. Cindy Ramos  
Reporter, San Antonio Express-News  
P.O. Box 2171  
San Antonio, Texas 78297-2171  
(w/o enclosures)